THE HON'BLE SRI JUSTICE A.GOPAL REDDY

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WRIT PETITION Nos.8118 of 1995, 21788 and 23637 of 2000

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DATED: 21-03-2006

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WP.No.8118 of 1995

Between:

E.Rukkamma and others . . .Petitioners

And

The Govt. of Andhra Pradesh and others . . .Respondents

WP.No.21788 of 2000

Between:

V.Narayana and others . . .Petitioners

And

Union of India and others . . .Respondents

WP.No.23637 of 2000

Between:

A.Papaiah and others . . .Petitioners

And

Union of India and others . . .Respondents

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION Nos.8118 of 1995, 21788 and 23637 of 2000

COMMON ORDER:

Since one and the same issue arises for consideration in all these writ petitions, they are heard together and are being disposed of by this common order.

In WP.No.8118 of 1995, petitioners 2 and 3 are sons of late E.Bala Singari. Petitioner No.6 is the wife and Petitioner No.7 is the son of late G.Pedda Balaiah. Petitioner No.9 is the son of late G.Durgaiah. It is stated that 28 harijan families including the families of Mr. E.Bala Singari; Mr. Balaiah alias Babaiah, Son of Narasimha; Mr. Rajalingam, Son of Papaiah; Mr. G.Pedda Balaiah, father of petitioners 6 and 7; Mr. G.Ramaiah; Mr. G.Durgaiah, father of petitioner No.9, were assigned Ac.63-12 guntas of agricultural land in Survey Nos.128, 133, 329, 330, 331 and 332 of Quthbullapur Village. Each family was assigned Ac.2-10 guntas of land under File No.A3/4151/54 of 1954, as per Circular No.14 of 1954 and under Laoni Rules, 1950, as sanctioned by the second respondent in his office letter *vide* No.A1/9618/57, dated
05-05-1958. On such assignment being made by the second respondent, their names were recorded as pattedars in the revenue records. While so, in 1962, one Military Estate Officer, Andhra Pradesh Circle, Secunderabad, illegally occupied Ac.21-15 guntas out of Ac.63-12 guntas of agricultural land assigned to '10' out of '28' harijan families. Therefore, the said affected persons filed WP.No.3204 of 1971 against the Military Estate Officer, A.P. Circle, Secunderabad, and two others. This Court allowed the said writ petition on 16-07-1993 directing the respondents to put the petitioners therein in possession or in alternative, to take steps for acquiring those lands and pay compensation to them. The matter was taken to the Supreme Court, which ultimately passed an order in C.A.No.664 of 1989 stating that the land in dispute is subjected to acquisition proceedings, and accordingly, directed the Land Acquisition Officer, Hyderabad, to initiate land acquisition proceedings and to pass an award in accordance with law at the rate of Rs.100/- per square yard for such acquired land.

Inspired upon the order passed by the Supreme Court, the petitioners herein invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India by way of writ petition contending that the first respondent under G.O.Rt.Nos.12 and 13, Industries Department, dated 11-01-1962, authorised the fourth respondent to acquire Ac.263-11 guntas of land situated at Quthbullapur, Balanagar and Boinpally Villages in Ranga Reddy District, and Ac.72-20 guntas of agricultural land situated at Moosapet and Kukatpalli Villages of Ranga Reddy

District, respectively, for the purpose of township of the fifth respondent-Indian Drugs and Pharmaceuticals Limited (IDPL). Accordingly, acquisition proceedings were initiated and the land was acquired. '11' out of 28 harijan families including the families of the petitioners in WP.No.8118 of 1995 are in possession and enjoyment of Ac.26-07 guntas of land, which was assigned to them. The said land was abutting to the lands acquired by the fourth and fifth respondents under G.O.Rt.Nos.12 and 13, dated 11-01-1962.

The fourth respondent handed over possession of land admeasuring Ac.361-38 guntas to the fifth respondent. The said land includes Ac.26-07 guntas of land belonging to the petitioners and other harijan families apart from the land acquired to an extent of Ac.335-31 guntas under the said G.O.Rt.Nos.12 and 13. Thus, the fifth respondent is in illegal and wrongful occupation of Ac.26-07 guntas of land and as the respondents deprived the right of the petitioners over the said land without following due procedure, the petitioners are entitled to the damages. The petitioners made correspondence with the respondents either for granting redelivery of possession of the land or for acquiring the land under the Land Acquisition Act by paying compensation to them, but no action was taken. In response, the fourth respondent in his letter *vide* No.B/283/94, dated 28-04-1994, informed the third respondent that he requested the Assistant Director, Survey and Land Records, Ranga Reddy District, to verify the post Award action of the lands acquired by him for the fifth respondent during 1962. In spite of the same, no action is being taken. Hence, the present writ petition.

WP.No.21788 of 2000 is filed by eight petitioners, out of which, petitioners 1 to 3 claims to be the legal heirs of
Mr. V.Venugopal Chary, who is a pattedar of 26 acres of land in Survey No.128/2 situated at Quthbullapur Village and Mandal, Ranga Reddy District, and petitioners 4 to 7 are the legal heirs of Mr.G.Veeraiah, Mr.P.Bhoomaiah and N.Narsimha, and Mr.Ramaiah, respectively. The fathers of petitioners 4 to 7 were assigned an extent of two acres of land each in Survey Nos.133/3, 330/2, 332 and 331/9 situated at Quthbullapur Village and Mandal, Ranga Reddy District.

Petitioners 1 to 6 by filing Civil Writ Petition No.4136 of 1998 and petitioner No.7 by filing Civil Writ Petition No.6225 of 1998 moved the High Court of Delhi for payment of compensation as the offices of respondents 1 and 2 are situated at Delhi. Thereafter, they withdrew the said petitions and invoked the *Mandamus* jurisdiction

of this Court by filing WP.No.21788 of 2000 to declare the action of the respondents in depriving their rights over the land without initiating land acquisition proceedings and without payment of compensation, as arbitrary and illegal and in violation of Article 300-A of the Constitution of India and consequently to direct the sixth respondent to initiate proceedings under the Land Acquisition Act in respect of the lands claimed by the petitioners and for payment of compensation or alternatively, direct respondents 3 and 4 to re-convey the above said lands to them.

Similarly, WP.No.23637 of 2000 has been filed by the petitioners, who are four in number, claiming that they are the owners of land to an extent of 14 acres in Survey No.127 situated at Quthbullapur Village and Mandal. The fourth respondent took possession of the land to an extent of Ac.8-04 guntas without initiation of land acquisition proceedings. The Government of Andhra Pradesh conveyed the land to an extent of Ac.891.38 guntas in favour of respondents 3 and 4. Since the petitioners' land was included in the said conveyed land and as they were deprived of their rights over the said land, they are entitled to compensation.

Though the writ petition against respondents 1, 3 to 6 was already dismissed for default as per the order passed by this Court on 23-09-2004, the petitioners had not taken any step to correct the default order or to set aside the same.

In W.P.No.8118 of 1995, respondents 3 and 4, namely the District Collector, and the Special Deputy Collector and Land Acquisition in-charge, filed counter-affidavit stating that the post of Special Deputy Collector, Land Acquisition Heavy Electrical Projects, was created for acquisition of lands for BHEL and other companies. The said scheme was winded up long back. There is no post of Special Deputy Collector, Land Acquisition Heavy Electrical Projects, at present. All connecting records were transferred to the Special Deputy Collector, Land Acquisition (Industries), Hyderabad.

It is further stated that requisitions were sent by the Commissioner of Industries, for acquisition of lands for construction of colony for the staff of IDPL, at Balanagar, Fatehnagar, Kukatpally, Kachiguda, Quthbullapur and Moosapet Villages. The proceedings were initiated for acquisition of land to an extent of Ac.94-33 cents of various survey numbers situated at Quthbullapur Village and awards were also passed as detailed in the statement at serial No.6. The Government executed Conveyance Deed on 8th day of February, 1994, in favour of IDPL for an

extent of Ac.891-38 guntas of land situated at Quthbullapur, Boinpally and Balanagar Villages. Accordingly, the lands in Survey Nos.128, 133, 329, 330, 331 and 332 of Quthbullapur Village have not been acquired under the Land Acquisition Act. Out of the above Survey Nos.133, 330/2, 331 and 332, the land, which is in possession of IDPL as per the Conveyance Deed, was classified as Government Poramboke and assigned land. The remaining lands are not in possession of IDPL. The lands, for which the Conveyance Deed was executed, were taken possession in 1961 and handed over possession to IDPL for establishing an industry and for construction of staff quarters, in 1962.

In WP.No.21788 of 2000, the General Manager of IDPL, on behalf of respondents 3 and 4 filed a counter affidavit stating that they are not parties to WP.No.3204 of 1971; that they are in possession of Ac.8-20 guntas in Survey No.128/2; that Survey Nos.133/3, 330/2 and 332 were not mentioned in the Conveyance Deed, dated 08-02-1994, and that they are in possession of the lands as per the Conveyance Deed.

Sri D.V.Reddy, learned counsel for the petitioners in WP.No.8118 of 1995 made two-fold submissions stating that land admeasuring Ac.891-38 guntas was acquired by the Government under Section 4(1) of the Land Acquisition Act, but land admeasuring Ac.918-00, which includes Ac.12-00 of land claimed by the petitioners in WP.No.8118 of 1995, was delivered possession to IDPL on 10-02-1962 by the fourth respondent, though the lands of the petitioners were not included in G.O.Rt.Nos.12 and 13, dated 11-01-1962, for acquisition. Since the lands of the petitioners were not included in the proceedings of taking possession of the lands, possession of IDPL over the said lands is unauthorized and illegal and that in the Conveyance Deed executed by the fourth respondent in favour of IDPL, they have included Survey Nos.133 and 330 admeasuring Ac.6-08 guntas and Ac.1-05 guntas of assigned land. Therefore, the petitioners cannot be deprived of the said land without paying due compensation. The third respondent addressed a letter, dated 04-03-1995, to the General Manager of the fifth respondent to inform as to when the said lands were fenced by them enclosing the lands of the petitioners. The fifth respondent in his reply letter, dated 21-03-1995, stated that the Conveyance Deed, dated 08-02-1994, executed in its favour, hence, writ petition cannot be thrown out on the ground of laches and there are no laches on their part. Learned counsel for the petitioners further submits that the petitioners are entitled to compensation for their

deprivation of property under the Land Acquisition Act or for redelivery of possession of the lands to them. He placed reliance on **THE SPECIAL LAND ACQUISITION AND REHABILITATION OFFICER v. M.S.SESHAGIRI RAO; RAM CHAND v. UNION OF INDIA**; **EXECUTIVE ENGINEER v. C.SHANKAR,** and **STATE OF U.P. v. MANOHAR**

Learned counsel Sri Y.Rama Rao and Mr. J.Ashwini Kumar appearing for the petitioners in WP.Nos.21788 and 23637 of 2000 would submit that in the letter, dated 28-04-1994, addressed by the sixth respondent-Special Deputy Collector Land Acquisition (Industries), Hyderabad, to the fifth respondent-District Collector, Ranga Reddy District, it is stated that on the representation made by the petitioners and other Harijans, the Assistant Director of Survey and Land Records was requested to verify post Award action of the lands acquired for IDPL during 1962. In reply, the Assistant Director of Survey and Land Records, Ranga Reddy District, addressed a letter, dated 25-05-1998, to the Revenue Divisional Officer, Ranga Reddy East Division, Ranga Reddy District, informing the position of the land in Survey Nos.128, 133, 330, 331 and 332 through a sketch prepared after spot inspection, on the basis of which, the Conveyance Deed was executed by including the lands of the petitioners. Therefore, the petitioners cannot be deprived of their right over the land without following due procedure.

The only submission made by the learned Assistant Government Pleader for Land Acquisition is that since the writ petitions were filed nearly after 34 and 38 years, they have to be dismissed on the ground of laches. He placed reliance on **K.NARASIAH v. GOVERNMENT OF ANDHRA PRADESH**.

Before proceeding to answer the rival submissions, it is an admitted fact by the petitioners that the lands were assigned to them under Circular No.14 of 1954 under Laoni Rules, 1950. The letter, dated 25-05-1998, annexed to WP.No.21788 of 2000, addressed by the Assistant Director of Survey and Land Records, to the Revenue Divisional Officer, Ranga Reddy District, discloses that survey work for verification of technical records of Quthbullapur village was entrusted to the surveyors, who verified the records and reported that in 1960, a supplementary Sethwar was issued through File No.E3/93/856/96/58 for survey Nos.128, 133, 330, 331 and 332 of Quthbullapur Village. The said Supplementary Sethwar is not available, whereas the Supplementary Akar Band is available. On verification of the Supplementary

Akar Band, the said Supplementary Sethwar was issued after settlement of boundary dispute in between Quthbullapur and Boinpally Villages and after attending the
sub-division work in favour of assignees. The assignees names were not recorded in Akar Band Register. The area details of the original Sethwar and Supplementary Akar Band are as under:

As per Original Sethwar		**As per Supplementary Akar Band**	
Sy.No.	**Area**	**Sy.No.**	**Area**
128	67-31	128/1 to 17	52-29
133	4-13	133	6-08
329	3-37		
330	5-21	330	1-05
331	22-34	331/1 to 4	8-24
332	3-07	332/1 and 2	0-25
	23.		69-11

On verification, it was found that Ac.21-15 guntas of land situated in Survey Nos.1289/9 to 128/16 and 331/3, 4 is in possession of E.M.E (Defence Authority); Ac.19-08 cents of land covered by Survey Nos.128/1, 128/2 (part) 128/17, 133, 330, 332/1, 2, is in possession of IDPL (Township); for Ac.21-30 guntas of land in Survey No.128/2, part of 128/5 to 8 and 331-2, a layout was prepared for Padma Nagar Colony Phases-I and II; for Ac.4-28 guntas of land in Survey No.128/3, 4, a lay-out was prepared for Cherukupally Colony, and land admeasuring Ac.2-10 guntas in Survey No.331/1 was allotted for Weaker Section Housing Colony. In all, the land admeasuring Ac.69-11 guntas was under occupation as referred to above.

It is also admitted by the petitioners that as early as in 1961, the Land Acquisition Officer took possession of their land along with the acquired land and was delivered to IDPL in 1962. In the letter, dated 28-04-1994, addressed by the Special Deputy Collector (Land Acquisition), Hyderabad, to the Collector, Ranga

Reddy District, it is stated that the question of acquiring the assigned lands under the Land Acquisition Act does not arise, normally. They might have been resumed and handed over to IDPL, which is to be verified through the Mandal Revenue Officer, Quthbullapur Mandal and accordingly, the Assistant Director of Survey and Land Records, Ranga Reddy District, had been requested to verify the post Award action of the lands acquired for IDPL during 1962. But as per the survey and records, the sketch prepared based upon the Akar Band Register discloses that the names of the assignees were mutated in the revenue records. In the pahanies filed by the petitioners in WP.No.8118 of 1995 for 1988-89, 91-92, 92-93, 94-95 and 95-96, the names of the assignees were shown in the pattadar column but in the possession column, name of IDPL was shown. Copy of the Statement of the lands prepared under Circular No.14 of 1954 discloses that 28 persons are Harijan family members. The poramboke area after adjustment of the Gairan Ac.63-12 guntas is cultivable and vacant and accordingly, under Circular No.14 of 1954 and under Laoni Rules, 1950, patta is to be given to various landless Harijans, for which, a sanction was ordered and implemented in the pahanies. It is not in dispute that the lands, which were acquired along with the lands of the petitioners, were delivered possession to IDPL in 1962. It is stated by the respondents that since they are assigned lands, the petitioners are not entitled to compensation and that the Government resumed the said lands and handed over possession to IDPL along with the other Government Land. Therefore, the land cannot be confined only to the extent of the land covered by the notification under G.O.Rt.No.13 and that possession of the Government land along with the land, which was resumed, was handed over to IDPL. The petitioners have not made any protest about such resumption of their land and handing over possession of the same to IDPL. The present writ petitions were filed nearly after 34 and 38 years and that too after some of the assignees obtained favourable orders from this Court against the Military Estate Officer where the Supreme Court finally directed to pay the compensation
for the acquired land at the rate of Rs.100/- per square yard.

The petitioners invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India nearly after
34 and 38 years is speculative and suffers from laches. The Survey report discloses that entire 69 acres of land was in occupation of various persons, but what extent of the land of the petitioners was in occupation of IDPL is not mentioned, whereas the land admeasuring Ac.11-00 in Survey Nos.128/1, 128/2, 128/17 classified as

Government poramboke, was delivered possession to IDPL and is in occupation since 1962. The petitioners having slept over for all these years, waived their right to claim compensation. When the lands were resumed and delivered possession to IDPL under the conditions of pattas granted, they have not raised any little finger till the Supreme Court decided the matter as referred to above. The petitioners having consciously waived their right to claim compensation for the lands acquired, cannot revive the same after long lapse of 34 and 38 years by taking advantage of the fact that some of the assignees, who promptly invoked the jurisdiction of this Court agitating their rights in WP.No.3204 of 1971, were successful before the Supreme Court, which granted compensation to them.

The judgments on which reliance placed by the learned counsel for the petitioners are inapplicable to the facts of the present case.

The Supreme Court in **STATE OF MAHARASHTRA v. DIGAMBAR** held as follows:

> "How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State by invoking writ jurisdiction of the High Court under Article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such

> relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches on undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State."

A Division Bench of this Court in **RF (RASAT & FARHAT) CHARITABLE TRUST v. SPECIAL DEPUTY COLLECTOR (GENERAL) LAND ACQUISITION** held that when the appellant has approached the High Court for directing reference to the civil Court under Section 18, it is the duty of this Court to examine whether the appellant had waived his right to seek for reference or whether there is any other legal bar disentitling the appellant from getting the relief sought for.

The generally accepted connotation of the term 'waiver' is an intentional relinquishment of a known right or voluntary relinquishment or abandonment of a known existing legal right or conduct, such as, warrants an inference of the relinquishment of a known right or privilege. Waiver differs from estoppel in the sense that it is contractual and is an agreement to release or not to assert a right, estoppel is a rule of evidence.

Once the appellant had waived its right to take any steps for claiming anything more than the amount stipulated in the agreement including the right to seek reference to Civil Court, the amount as stipulated in the agreement having been paid to the appellant and the respondents having acted as per the agreement, the appellant is estopped from making a claim contrary to the terms and conditions of the agreement and insist upon the enforcement of the rights that he had waived in

law. It is to be noted that the agreement had not been put an end to by any mode known to law.

In the instant case, the petitions are silent, when the lands were taken possession by the Government on the premise that they need not be paid compensation, as the lands assigned can be resumed at any time and since it is required for the Government purpose, it exercised such option, and accordingly delivered possession of the land along with the other acquired land to IDPL. Once the petitioners have not objected for resumption of the land from 1962 onwards till the writ petitions are filed, it can easily be inferred that they have waived their rights to claim compensation for the lands assigned or to question resumption of the lands, rights under assignment created if any.

Since the petitioners filed the present writ petitions after long lapse of 34 and 38 years, it is rather difficult to comprehend that they are not aware of their rights and that they have not accepted the right of the Government to resume the lands for any other public purposes under conditions of assignment granted. No endeavour has been made by the learned counsel for the petitioners that under the conditions mentioned in the pattas granted to the petitioners, the Government cannot resume the land, nor the petitioners have agitated in-time, when the land was delivered to IDPL in 1962. In view of the same, the present writ petitions filed are speculative in nature, and therefore, they cannot be entertained and are liable to be dismissed.

The writ petitions are accordingly dismissed. There shall be no order as to costs.

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(A.GOPAL REDDY, J)

21st MARCH, 2006.

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